

APR 12 1996

ORIGINAL

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

In the Matter of)
Federal-State Joint Board on) CS Docket No. 96-45
Universal Service)

COMMENTS OF THE NATIONAL BLACK CAUCUS OF STATE LEGISLATORS
TELECOMMUNICATIONS & ENERGY COMMITTEE
HONORABLE ALBERT VANN, CHAIRMAN

Hon. Albert Vann, member
New York State Assembly
Legislative Office Building
#422
Albany, New York, 12248
518-455-5474

April 12, 1996

No. of Copies rec'd
List ABCDE

43

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	CS Docket No. 96-45
Federal-State Joint Board on)	
Universal Service)	

**COMMENTS OF THE NATIONAL BLACK CAUCUS OF STATE LEGISLATORS
TELECOMMUNICATIONS & ENERGY COMMITTEE
HONORABLE ALBERT VANN, CHAIRMAN**

The National Black Caucus of State Legislators (NBCSL) is a non-profit organization headquartered in Washington D.C. dedicated to the development and promotion of educational, research and training programs designed to enhance the effectiveness of African American state officials as they consider legislation and issues of public policy that impact directly or indirectly on the constituents of their respective states. Founded in 1977 by 90 African-American state legislators at a meeting in Nashville, Tennessee, today the National Black Caucus of State Legislators (NBCSL) represents 450 members in 42 states and the U.S. Virgin Islands.

The founders recognized in the seventies that state government would eventually reestablish its critical role in democratic governance. The Telecommunications Act of 1996 has altered dramatically the federal/state landscape, and NBCSL is uniquely poised to provide guidance on the redrafting of state policy and oversight in telecommunications, which will effectively represent many of the constituents that the new universal service paradigm will address.

As Chairman of the Telecommunications and Energy committee of NBCSL, I am charged with the responsibility to assist the membership in the development of an appropriate role for participation as African-American state legislators and/or commissioners in:

--helping to define the overall state responsibilities and areas of cooperation with the Federal Government

--advising the most effective policy for the Federal Universal Service design

--formulating an effective and comprehensive cooperative role for state universal service policies in our respective states

My ability to carry out my function for NBCSL is enhanced by my position as Chairman of the Standing committee on Corporations, Authorities and Commissions in the New York State Assembly. In that forum, I work in partnership with the Legislature, the Executive branch and our Public Service Commission in fashioning an effective policy that serves the citizens of New York State.

NBCSL believes that there must be an informed collective voice representing African-Americans whose communities must be included in the deployment of and access to advanced telecommunications services. This is the only way that the spirit of a forward looking 21st century American public will be realized.

INSURING A ROBUST STATE FORUM

NBCSL welcomes the language under section 254 (f) of the Act that clearly states:

A State may adopt any measure with respect to universal service that is not inconsistent with the Commission's rules. This subsection also requires all providers of intrastate telecommunications to contribute to universal service within a State in an equitable and non-discriminatory manner, as

determined by the state(emphasis added). A State may adopt additional requirements with respect to universal service in that State, so long as those additional requirements do not rely upon or burden Federal universal support mechanisms. ¹

State legislative oversight and direction will be a critical element in the reworking of the federal/state telecommunications compact. In passing the '96 Act, Congress has charted new direction for the nation and signaled its continuing oversight of the process through its monitoring of the commission's interpretation of the Act. State legislators will play a parallel role in providing similar direction at the state level.

NBCSL sees a number of areas where critical oversight by informed elected officials will help realize the goals intended by the Act. The Telecommunications Act intends to foster full competition and encourages states to be responsive in this regard. States must exercise jurisdiction over the critical process of establishing local interconnection. States are to supervise the progress of the federally required negotiations between incumbent telcos and their competitors to set interconnection rates, and states retain the authority to arbitrate differences upon request. However, the Act also states:

If a State commission fails to act to carry out its responsibility under this section in any proceeding or other matter under this section, then the Commission shall issue an order preempting the State commissions's jurisdiction of that proceeding or matter within 90 days after being notified or (taking notice) of such failure, and shall assume the responsibility of the State commission under this section with respect to the proceeding or matter and act for the State

¹telco act 96 Universal Service, conference agreement pg. 132

Commission. ²

NBCSL believes that state elected officials should exercise the same vigilance over this process at the state level that Congress is currently exercising over the FCC. In that regard serious consideration must be given to assuring effective notification prior to any federal decision to preempt state regulators. Notification must be given to the Governor, legislative leaders and chairs of state regulatory oversight committees of any impending failure of state commissions to comply with interconnection arbitration time limits set by the Act. Each state should be required to submit a service list to the commission to be used to effect notification. At minimum, a uniform national policy of competition requires such a mechanism to insure that state commissions who adhere to the slower monopoly style process may be encouraged to accelerate the regulatory process to achieve desired change. The state legislature is the appropriate and effective forum to direct compliance with federally mandated guidelines. The Joint Board should put special emphasis on insuring that state elected officials fully participate in the process.

PRIORITIES THE BOARD SHOULD CONSIDER IN ITS WORK

NBCSL wishes to focus on the following:

Access in Rural and High Cost Areas.--Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services,

Telecom Act sec. 252(e)(5)

including interexchange services, that are reasonably comparable to those services provided in urban areas and that are reasonably comparable to rates charged for similar services in urban areas.³

NBCSL is concerned that the access and rate provisions for determining the platform for universal service support are based on insuring that rural and high cost areas are comparable to a monolithic urban area, replete with opportunity to deploy and utilize advanced telecommunications services with ease. We strongly urge the Joint Board to consider that certain urban communities are "high cost" areas under the current definition. The consideration of universal service in a competitive environment must take into account areas where the market will not go. The fact that private decisionmakers will not build advanced capability in urban neighborhoods is a result of their belief that there will not be a satisfactory return on their investment. This is most certainly "high cost" under the federal definition. It is well known that Manhattan has very little broadband infrastructure above 59th st., however, under the Act's definition, above 59th st. would not be considered a high cost area. In my own district, Brooklyn's Bedford Stuyvasant, until last year the central office switches had not been upgraded since 1963. It would be an unfortunate irony if wealthy distant communities were subsidized and low income residents in urban communities were neglected.

In determining the effective use of universal service

³254 (b) (3) Telecom Act 1996

mechanisms in a competitive environment, a procedure to identify market failure would be a more precise tool to insure that subsidy support is utilized where needed.⁴ The New York State Public Service Commission in its incentive settlement proceedings correctly considered monitoring poor service quality in "hot spots" throughout New York State as a priority in evaluating NYNEX's performance during the life of the final incentive agreement.⁵ NBCSL believes that the Joint Board should make clear that high cost, rural areas and low income communities in urban areas are not mutually exclusive groups, but have common needs that can be addressed by the new Federal universal service standards. Such a determination will insure that funds will be properly allocated to areas with the least access to advanced services, capacity and likelihood of being addressed by unregulated competition.

HOW FEDERAL UNIVERSAL SERVICE PROVISIONS CAN BE MAXIMIZED TO BENEFIT THE DISADVANTAGED AND MINORITIES

In the Notice of Proposed Rulemaking the Commission in referencing our previously discussed section on Access in Rural and

⁴ Market-driven competition will not bring new telecommunications services to everyone in the state at the same time. This can adversely affect the citizens and communities left behind. . . New York's policies to foster competition must reflect a continuing commitment to basic universal service, including an expanding definition of such service as new services become essential to participation in the social and economic mainstream. **Connecting to the Future--The Report of the New York State Telecommunications Exchange--December, 1993 pg. 22**

⁵Case 92-C-0665, Opinion #95-13, Opinion and Order concerning performance regulatory plan (issued August 16, 1995) New York State Public Service Commission

High Cost Areas, ⁶ states:

We recognize, however, that the range of services is not likely to be identical for all urban areas, and may, as a practical matter, vary according to the demographic characteristics of consumers located in a given urban area. We seek comment on how best to incorporate that variation in our use of urban area service as a benchmark for comparative purposes. ⁷

NBCSL strongly encourages the Joint Board to establish intraurban benchmarks for comparative purposes in order to simultaneously address market failure in high cost (ie. distance), rural and underserved urban areas through Federal universal service designs. We note that the Joint Explanatory Statement added insular areas and low income consumers to section 254(b)(3) in conference.⁸ One of the critical objectives of the new telecommunications environment is to insure universal access to advanced services. The issue of access for the urban disadvantaged and minorities has been a longstanding and inadequately addressed aspect of the social policy discussions around telecommunications. The fact that the issue of access for low income persons had to be added in conference is a cause for concern to NBCSL (we also note that our members from the Virgin Islands will be paying close attention to the discussions of advanced services for insular territories, as will my Puerto Rican colleagues in the New York State Assembly).

⁶ Id. sec. 254(b)(3).

⁷ Notice of Proposed Rulemaking and Order Establishing Joint Board--March 8, 1996 pg.6

⁸ S. Conference Report #104-230, 104th Congress., 2nd Sess. 131 (1996).

NBCSL is pleased that the Commission recognized that services that may be included among the services to consumers in rural, insular and high-cost areas should also be services supported by Federal universal service support mechanisms for delivery to low-income consumers.⁹ In addition, the Commission calls for comment on the potential designation of additional services for low income users.¹⁰ Included in the Commission's list for discussion are:

- Free Access to Telephone Service Information
- Toll Limitation Services
- Reduced Service Deposit
- Services Other Than Conventional Residential Services
- Other Services For Low-Income Subscribers.¹¹

NBCSL wishes to recognize the long overdue discussion that needs to take place regarding the lack of universal service to low income residents in the current paradigm of common carriage regulation. In a study conducted by the Office of Telecommunications and Energy in New York City, my own district in Bedford Stuyvasant had 28% of the residences without telephone service.¹² Although the State of New York has its own Lifeline program,¹³ over 75% of the citizens eligible for that program were not being reached. In the settlement agreement that led to

⁹ Notice Joint Board Part III B. 1, Part III C. 1

¹⁰Id. Notice Part III. C.1

¹¹ Id. Part III. C.1 para 51, 54, 56, 57, 58

¹² New York City Household Telephone Penetration Study; A Report on the Status of Universal Telephone Service in New York City's Neighborhoods (Nov 1993) City of New York Dept. of Telecommunications & Energy

¹³ Case 90-C-0191 Order modifying Lifeline Program (issued July 27, 1992) New York State Public Service Commission

incentive based regulation in New York State, I was able to secure agreement from NYNEX to aggressively promote the Lifeline program in advertising, customer service and on service vehicles.

NBCSL is aware of the long term advocacy of providing better customer service to low income residents. Those advocacy organizations will have the best perspective on details and pricing mechanisms that will encourage and support the comprehensive look at low income service that the Commission seems prepared to address. NBCSL would like to go on record that while it is our expectation that traditional narrow band services finally be addressed for low income residents, we also are keeping in mind that the primary purpose of the Joint Federal/State board is to design the next generation of Federal Universal Service mechanisms that will support an even deployment and access to advanced telecommunications services to all communities, including low income communities.

HOW FEDERAL UNIVERSAL SERVICE PROVISIONS CAN BE STRUCTURED TO STIMULATE STATE UNIVERSAL SERVICE DECISIONMAKING AND LEVERAGE COOPERATIVE OPPORTUNITY

The primary mandate to the Joint Board is made clear in section 254(c)(1):

(1) In General.--Universal service is an evolving level of telecommunications services that the Commission shall establish periodically under this section, taking into account advances in telecommunications and information technologies and services. The Joint Board in recommending, and the Commission in establishing, the definition of services that are supported by Federal universal service support mechanisms shall consider the extent to which such telecommunications services--

(A) are essential to education, public health, or public safety;

(B) have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers;

(C) are being deployed in public telecommunications networks by telecommunications carriers; and

(D) are consistent with the public interest, convenience, and necessity.

(3) Special Services--In addition to the services included in the definition of universal service under paragraph (1), the Commission may designate additional services for such support mechanisms for schools, libraries, and health care providers for the purposes of subsection (h)¹⁴

NBCSL believes the priority of universal service in a competitive environment is to solve the issue of societal interconnectivity to a basic menu of evolving advanced telecommunications technology enjoying widespread use. The Commission should establish guidelines for identifying market failure as well as propose technologically neutral solutions that provide specific remedies. Such a needs based scenario will insure that the mandate to serve high cost, rural, insular and low income areas will be met. The Commission through its designation of essential carriers and support for infrastructure to public institutions should view that support as the establishment of a primary point of presence. Such a universal service approach would not subsidize public infrastructure or aggregated public services where residential market penetration is at or above average national, regional or statewide penetration rates. This will insure that funds will be properly allocated to areas with the least access to advanced services, capacity and likelihood of being addressed by unregulated competition. Public institutions and

¹⁴ Telecom Act 1996, sec. 254 (c) (1), (3)

community organizations will then become the primary source of access to advanced services in those locations.

NBCSL asserts that a needs based Federal universal service policy allows the state to address market failure through its own development of universal service policy. As mentioned, the New York State Public Service Commission, in its incentive proceeding identified poor service areas that must be addressed by NYNEX in order to continue to qualify for relaxed rate regulation.¹⁵ The PSC's service quality guidelines address hot spots of poor service, or in future deliberations, lack of advanced infrastructure. In New York State, the State Education Department has proposed the Omnibus Technology in Education Act of 1996.¹⁶ The bill provides for a comprehensive plan to upgrade the infrastructure and networking capability for K-12 schools, Higher Education and Libraries. It also goes a step further by including cultural and community service organizations as part of eligible recipients. Most importantly, it calls for a redirection of human resource funds toward training teachers to maximize instruction and learning in an interactive content environment. It is an example of a state utilizing its traditional spending capability, whether bonding authority or redirecting traditional spending in human resource allocation or aggregating current information technology spending for more modern use and cost savings.

¹⁵Case 92-C-0665, Opinion #95-13, Opinion and Order concerning performance regulatory plan (issued August 16, 1995) New York State Public Service Commission

¹⁶ known as HP-12, not as yet introduced

A needs based Federal universal service plan can compliment a comprehensive state initiative by insuring that support is given to public institutions who are the last resort for access opportunities in advanced telecommunications services, and/or serve as the initial point of presence for technologically neutral broadband infrastructure. This complimentary profile can also stimulate regulatory solutions on the state level with regards to universal service. The needs based formula assures that there is indeed a private market concept for business, residential and public sector use of advanced telecommunications use and that both Federal and State universal service formulas will truly be targeted to insure societal interconnectivity.

NBCSL recognizes that not all states will be as comprehensive or prompt in their responsibilities in telecommunications social policy. We note that private sector competitive providers have an appeal to the FCC for swift resolution of interconnection issues. NBCSL proposes that there should be an equally expeditious appeals process and time limits for the failure to provide initial and escalating minimum federal universal service standards by state regulators, legislators or Governors who have been properly notified of their delinquency. Upon such assumption of responsibility, the Commission can determine public sector and eligible carrier solutions on a needs basis first.

Attachment: Service List

The Honorable Reed E. Hundt, Chairman
Federal Communications Commission
1919 M Street, N.W. - Room 814
Washington, D.C. 20554

The Honorable Andrew C. Barrett, Commissioner
Federal Communications Commission
1919 M Street, N.W. - Room 826
Washington, D.C. 20554

The Honorable Susan Ness, Commissioner
Federal Communications Commission
1919 M Street, N.W. - Room 832
Washington, D.C. 20554

The Honorable Julia Johnson, Commissioner
Florida Public Service Commission
Capital Circle Office Center
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

The Honorable Kenneth McClure, Vice Chairman
Missouri Public Service Commission
301 W. High Street, Suite 530
Jefferson City, MO 65102

The Honorable Sharon L. Nelson, Chairman
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, WA 98504-7250

The Honorable Laska Schoenfelder, Commissioner
South Dakota Public Utilities Commission
500 E. Capital Avenue
Pierre, SD 57501

Martha S. Hogerty
Public Counsel for the State of Missouri
P.O. Box 7800
Harry S. Truman Building, Room 250
Jefferson City, MO 65102

Deborah Dupont, Federal Staff Chair
Federal Communications Commission
2000 L Street, N.W., Suite 257
Washington, D.C. 20036

Paul E. Pederson, State Staff Chair
Missouri Public Service Commission
P.O. Box 360
Truman State Office Building
Jefferson City, MO 65102

Eileen Benner
Idaho Public Utilities Commission
P.O. Box 83720
Boise, ID 83720-0074

Charles Bolle
South Dakota Public Utilities Commission
State Capital, 500 E. Capital Avenue
Pierre, SD 57501-5070

William Howden
Federal Communications Commission
2000 L Street, N.W., Suite 812
Washington, D.C. 20036

Lorraine Kenyon
Alaska Public Utilities Commission
1016 West Sixth Avenue, Suite 400
Anchorage, AK 99501

Debra M. Kriete
Pennsylvania Public Utilities Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Clara Kuehn
Federal Communications Commission
2000 L Street, N.W., Suite 257
Washington, D.C. 20036

Mark Long
Florida Public Service Commission
2540 Shumard Oak Blvd.
Gerald Gunter Building
Tallahassee, FL 32399-0850

Samuel Loudenslager
Arkansas Public Service Commission
P.O. Box 400
Little Rock, AR 72203-0400

Sandra Makeeff
Iowa Utilities Board
Lucas State Office Building
Des Moines, IA 50319

Philip F. McClelland
Pennsylvania Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, Pennsylvania 17120

Michael A. McRae
D.C. Office of the People's Counsel
1133 15th Street, N.W. - Suite 500
Washington, D.C. 20005

Rafi Mohammed
Federal Communications Commission
2000 L Street, N.W., Suite 812
Washington, D.C. 20036

Terry Monroe
New York Public Service Commission
Three Empire Plaza
Albany, NY 12223

Andrew Mulitz
Federal Communications Commission
2000 L Street, N.W., Suite 257
Washington, D.C. 20036

Mark Nadel
Federal Communications Commission
1919 M Street, N.W., Room 542
Washington, D.C. 20554

Gary Oddi
Federal Communications Commission
2000 L Street, N.W., Suite 257
Washington, D.C. 20036

Teresa Pitts
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, WA 98504-7250

Jeanine Poltronieri
Federal Communications Commission
2000 L Street, N.W., Suite 257
Washington, D.C. 20036

James Bradford Ramsay
National Association of Regulatory Utility Commissioners
1201 Constitution Avenue, N.W.
Washington, D.C. 20423

Jonathan Reel
Federal Communications Commission
2000 L Street, N.W., Suite 257
Washington, D.C. 20036

Brian Roberts
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102-3298

Gary Seigel
Federal Communications Commission
2000 L Street, N.W., Suite 812
Washington, D.C. 20036

Pamela Szymczak
Federal Communications Commission
2000 L Street, N.W., Suite 257
Washington, D.C. 20036

Whiting Thayer
Federal Communications Commission
2000 L Street, N.W., Suite 812
Washington, D.C. 20036

Deborah S. Waldbaum
Colorado Office of Consumer Counsel
1580 Logan Street, Suite 610
Denver, Colorado 80203

Alex Belinfante
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Larry Povich
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554